IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.15739 of 2002

Between:

G.S.Raghavender Rao S/o Late Sri G.Shiaram
APSRTC., plot No. 9, H.no. 5-1043, Father Balaiah Nagar, Ol Alwal, Secunderabad-500010.

...PETITIONER

AND

1. APSRTC, rep.by its Managing Director, Musheerabad, Hyderabad.
2. The Regional Manager, APSRTC, Ranga Reddy Region, M.G.Bus Station, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the respondents & issue an appropriate writ or order or direction particularly one in the nature of writ of mandamus declaring the proceedings issued by the R1 & R2 in proceedings No.P5/756(2)/2002-RR dated 20.06.2002 & the proceedings issued by the R2 No.P5/756(2)/2002-RR dated 30.06.2002 is illegal, unjust contrary to law arbitrary & perverse, in violation of principles of natural justice & violative of Articles 16 & 21 of the Constitution of India & grant all consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents: MR.V.T.M.PRASAD, Standing Counsel for APSRTC

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.15739 of 2002

ORDER:

Heard Sri A.K.Jayaprakash Rao, the learned counsel appearing for the petitioner and Sri V.T.M.Prasad, the learned standing counsel appearing for the respondent-Corporation.

The petitioner herein, who worked as an Assistant Traffic Manager, APSRTC (now retired), filed this Writ Petition, *inter alia*, seeking a writ of mandamus to assail the orders dated 20.06.2002 and the proceedings dated 30.06.2002, where under the petitioner's retirement was sought to be given effect with retrospective effect from the year 1999.

The case of the petitioner, in brief, is that he joined service on 15.12.1960 as a Junior Clerk, put up a long service with several promotions at different stages and reached to the post of Assistant Traffic Manager. As per the school records and the entries made in the service records with the respondent-Corporation, his date of birth was shown as 04.06.1944 and the petitioner had retired from his service on 30.06.2002. However, the respondents herein gave a show cause notice on

25.06.2002 calling upon the petitioner to explain as to why the date of birth should not be entered as 14.08.1941 as shown in the format with them and further, he had to be retired in the year 1999 itself and gave seven days time for giving explanation. But, even before giving any explanation to the said show cause notice, the impugned orders were passed on 30.06.2002, to the effect that the petitioner was deemed to have retired in the year 1999 basing upon the date of birth as 14.08.1941. Hence, the Writ Petition.

Sri A.K.Jayaprakash Rao, the learned counsel for the petitioner submitted that it is pertinent to note that the date of birth on 14.08.1941 was not supported by the service entries made by the respondents, but the date of birth on 04.06.1944 was supported by the school records and by the service records since inception. Therefore, there could not have been any sudden need to the respondents to mention the date of birth as that of the year 1941. Further, even to say that the date of birth is of the year 1941, no other material was produced. That apart, having given the show cause notice, even before filing explanation, the impugned orders were passed.

Sri V.T.M.Prasad, the learned standing counsel appearing for the respondent-Corporation submitted that the impugned action was taken in pursuance of the format which was duly certified by the petitioner himself, wherein he has shown his date of birth as 14.08.1941, which necessitated the respondent-Corporation to correct the same and put the block on the date of birth. Therefore, the petitioner cannot make any claim.

Considering the submissions made on both sides and on perusal of the material available on record, the only question, which arises for consideration is whether under the facts and circumstances, the respondents are justified in correcting the date of birth and deemed retirement of the petitioner from the year 1999 with a retrospective date.

There is no dispute of the fact that the petitioner was an employee who joined service in the year 1960 and reached to the stage of Assistant Traffic Manager. The service record and the connected school record show his date of birth as 04.06.1944 and he retired from his service on 30.06.2002. It is only thereafter, the impugned proceedings were initiated by the respondents herein by giving a show cause notice on 25.06.2002, wherein seven days time was given for explanation. However, before the expiry of the said period, the impugned orders were passed on 30.06.2002. Therefore, *prima facie*, the impugned action is in the teeth of the principles of natural justice.

That apart, having regard to the fact that admittedly, the service record which is based upon the school record shows the date of birth as 04.06.1944 and there is no material valid or worth only to show that the petitioner's date of birth is otherwise than as shown nor there was anything to support the date of birth as in the year 1941. On the other hand there is another consideration to the petitioner that the school authorities and the respondents accepted the date of birth as in the year 1944. The respondents also placed reliance on the petitioner's Service Register and the petitioner's date of birth was shown as in the year 1941, which was shown as rounded up and there was a question mark adjacent there to. No explanation is

forthcoming with regard to the same as to how the said entry came into existence from both sides. If really it was shown as the year 1941, the same could have been carried into the service records and the petitioner could have been retired much earlier. However, instead of it, the entry was taken only as of the year 1944, which apparently based on the entry with the school record, where as the entry of the year 1941 has no basis nor there is any other material to support the same. In the circumstances, the impugned action apart from being violative of natural justice is not sustainable and necessarily, having regard to the school entries, the date of birth is to be taken as 04.06.1944 and he was rightly retired on reaching superannuation.

In view of the same, the Writ Petition is accordingly allowed and the impugned orders dated 20.06.2002 and 30.06.2002 are set aside.

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(B.PRAKASH RAO, J)

22nd February 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the twenty second day of February 2005.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Managing Director, APSRTC, Musheerabad, Hyderabad.
2. The Regional Manager, APSRTC, Ranga Reddy Region, M.G.Bus Station, Hyderabad.
3. Two CD copies.